

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.36 OF 1998

BARIA PRABHUBHAI KALJIBHAI
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

MR YATIN SONI for the Petitioner
MR DA BAMBHANIA for the Respondents

CORAM: MR.JUSTICE S.K.KESHOTE
Date of Order: 23/01/1998

C.A.V. ORDER

#. The learned counsel for the petitioner states that the petitioner has filed Civil Application No.73 of 1998 for amendment of this Special Civil Application. The papers of that Civil Application have been called for and the amendment which is sought to be made by petitioner has been perused.

#. Challenge has been made by the petitioner, a Deputy Engineer of the Government of Gujarat, to the order dated 30th December 1997 of respondent No.1 under which he was ordered to be transferred from District Panchayat Godhra to Amreli District Panchayat.

#. Challenge has been made by petitioner to this order on the ground that it is made in contravention of the Government Circular dated 15th December 1997, under which directions have been issued not to transfer the employees/officers appointed for the election work, after the notification of the election programme, either within or outside the Districts. The learned counsel for the petitioner contended, by way of amendment of the Special Civil Application, that the transfer is at the instance or the directions of the Hon'ble Minister of the Roads & Building Department, Shri C.K.Raolji, who belongs to the Rashtriya Janta Party (R.J.P.). Carrying this contention further, the learned counsel for the petitioner urged that the respondents have made the order of transfer of petitioner under the oral order and direction of the Hon'ble Minister concerned as 10 to 12 Sarpanchs, who

belong to the R.J.P. of the Government have made a representation to the said Hon'ble Minister for transfer of the petitioner and that transfer has been ordered to be made after Assembly was dissolved. Lastly it has been contended that the Mamlatdar, Jhalod, has appointed the petitioner as Zonal Officer to conduct the elections to be held on 20.1.98 and 21.1.98 of the Gram Panchayats and as such, the petitioner could not have been transferred.

#. On the other hand, the learned counsel for respondents contended that there was a serious complaint against the petitioner and as such he has been transferred from the District Panchayat Godhra to Amreli District Panchayat. It has further been contended that a preliminary enquiry has been conducted against the petitioner wherein the petitioner has been found responsible for payment without checking the measurements and muster and explanation has been called for from him through the Superintending Engineer (S.E.). Replying to the contention of the learned counsel for the petitioner of malafides, the learned counsel for the respondents contended that the Minister concerned has not been impleaded as a party to this Special Civil Application and behind the back of that person, the allegation of malafides cannot be gone into. Replying the last contention of the learned counsel for the petitioner that the transfer has been made in violation of the Government Circular dated 15th December 1997, the learned counsel for the respondents contended that under the said Circular, only those employees directly connected with the election work of the Gram Panchayats could not have been transferred but the petitioner was not given any work of election. He is not directly connected with the election work. The election work has to be assigned by the District Collector and no such document has been produced by the petitioner on record that he has been entrusted with election work.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The order of transfer of an officer who is an employee of the Government or statutory Corporation or body of the Government, is subject to judicial review of this Court only on two grounds, namely, (i) the authority has passed the order malafide or (ii) the order has been passed in violation of some statutory provisions. Reference in this respect may have to the decision of the Apex Court in the case of Union of India v. S.L.Abbas, reported in JT 1993(3) SC 678. In the Special Civil Application, the petitioner has not come up with any case

of malafides of respondent No.1. By filing the application for amendment, the petitioner has now come up with the case that the respondent No.1 has passed the order of his transfer under the oral order and direction of the Hon'ble Minister Shri C.K.Raolji, who belongs to R.J.P., on the representations stated to be made by 10 to 12 Sarpanchs, also of R.J.P. These averments have been made by petitioner in the Civil Application and are affirmed to be true to the best of the petitioner's knowledge and belief. So it is not the case of petitioner that he has any personal knowledge of the fact that the said Hon'ble Minister, under his oral order and directions, directed the respondents to transfer the petitioner. Otherwise also, it is difficult to believe that the petitioner could have personal knowledge of this fact. The petitioner has not disclosed the source of his information that the respondent No.1 has transferred him under the impugned order, on the oral order and directions of the said Hon'ble Minister. In absence of this material fact, it is difficult to accept, what to say to believe, that the order impugned in this case transferring the petitioner has been made by respondent No.1 under the oral order or direction of the said Hon'ble Minister. Otherwise also, the question of malafide, as sought to be raised by the petitioner cannot be gone into as the Hon'ble Minister has not been impleaded as a party. In the case of Dr.J.N.Banavalikar v. Municipal Corporation of Delhi & Anr., reported in AIR 1996 SC 326, the Apex Court has held that where the allegation of malafide has been made, then the person against whom malafide has been alleged is a necessary party. In absence of the Hon'ble Minister concerned, at whose instance the petitioner states that he has been transferred, the allegation of malafide, as alleged against him otherwise also cannot be gone into.

#. The matter may also be looked into from another aspect. Admittedly, the concerned Minister is the Minister of the Department in which the petitioner is working and in case for the proper functioning of the Department if the said Minister orders for transfer of one of officers of his own Department, it cannot be presumed and assumed that it is a malafide order passed by the Government. In case the complaints regarding the work of the petitioner have been made by Sarpanchs and prima-facie if the respondent No.1 has found substance in these complaints, then how it can be said to be a malafide action of the respondents, where the petitioner has been shifted from that place. If we go by the facts of this case as coming out from the record, it transpires that there was strong opposition against the posting of

the petitioner and in fact, the Jhalod Taluka Panchayat, way back on 9th October 1997, resolved that looking to the unsatisfactory work of the petitioner, his posting at Jhalod should be opposed and the Resolution to that effect has been sent to the District Development Officer, Godhra, for necessary action. There were other complaints against the petitioner and the respondent No.1 has thought it to be proper to shift the petitioner from the said place. In one of the complaints, a preliminary enquiry has also been conducted and preliminary enquiry report is submitted by the S.E. on 4.11.97, in which the petitioner is found responsible for payment without checking measurements and muster. So taking into consideration these facts, it is difficult to accept that the respondent No.1 has acted mala fide in transferring the petitioner to Amreli District Panchayat.

#. So far as the second contention of the learned counsel for the petitioner is concerned, it is suffice to say that the Circular dated 15th December 1997 is of no help to the petitioner as he has not been entrusted with any work of conducting election of Gram Panchayats by the authority. The certificate of the Mamlatdar which has been produced on record is of no substance as the District Collector is the competent officer who has to assign the work of conducting election of Gram Panchayats to the officers. The petitioner has not produced on record any such document. Apart from this, the Circular dated 15th December 1997 is only administrative in character and violation thereof will not give any enforceable right to the petitioner. The Apex Court, in the case of Union of India v. S.L.Abbas (supra), held that if the transfer of an officer/ employee is made in violation of some administrative Circulars or Resolutions or orders, it will not give any enforceable right to the concerned officer/ employee. It is true that the administrative instructions are binding on the subordinates but violation thereof does not constitute any infirmity in the said action. Reference in this respect may have to the decision of the Apex Court in the case of Collector, Ongole & Anr. v. Narra Venkateswarlu & Ors., reported in 1996(7) SCC 150. In the present case, transfer has been made of the petitioner by the Government itself and the petitioner cannot make any grievance against the said order on the aforesaid counts. It was the Government's own Circular or order and as such if any order has been made by the Government itself, contrary to its own order earlier made, it is difficult to accept that it will give some enforceable right to the petitioner under Article 226 of the Constitution of India.

#. While concluding the arguments, the learned counsel for the petitioner urged for sympathetic consideration of the matter by stating that the transfer of the petitioner has been made in the middle of the academic session, and as such he may be allowed to continue at that place till June 1998 so that studies of his children may not suffer. The learned counsel for the petitioner, during the course of arguments, admits that the kids of the petitioner are studying in 2nd and 3rd standards and looking to this fact, it is difficult to accept that they will suffer any loss of studies. Their education will not suffer in any manner by his transfer.

##. Taking into consideration the totality of the facts of this case, I do not find any illegality in the order impugned in this Special Civil Application which calls for interference of this Court in this case. In the result, this Special Civil Application fails and the same is dismissed. Notice discharged.

(S.K.Keshote, J)

(sunil)